

MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE
March 4, 2005

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Office of the California Department of Corporations in Sacramento on March 4, 2005. Attendance was as follows:

MEMBERS PRESENT:

Curt C. Barwick
Christopher A. Delfino
Bruce R. Deming
James F. Fotenos
Steven K. Hazen
Matthew R. Gemello
Nina L. Hong
Brian A. Lebrecht
Brian D. McAllister
Stewart Laughlin McDowell
William R. Sawyers
David M. Serepca
Teri Shugart
Jennifer Lynn Sostrin
Steven B. Stokdyk
Suzanne L. Weakley
Brian M. Wong
Russell J. Wood

MEMBERS ABSENT:

Mark T. Hiraide
Victor Hsu
Lee Kolodny
Deborah J. Ruosch
Lemoine Skinner III
Bertha Cortes Willner

LIAISONS AND GUESTS PRESENT:

Betsy Bogart, Business Programs Division, California Secretary of State
Bruce Dravis
Steve Harmon
Timothy L. Le Bas, Assistant Commissioner, California Department of Corporations
Gayle Oshima, Corporations Counsel, California Department of Corporations
Joanne Ross, California Department of Corporations
Rosalind Tyson, Associate Regional Director, U.S. Securities and Exchange Commission*
Mark T. Uyeda, Chief Advisor to the Commissioner, California Department of Corporations
Kathleen Vasquez, Uniform Commercial Code Section, California Secretary of State
Beth Vaughan, Business Programs Automation Project, California Secretary of State
John Webber, NASD Regulation, Inc.*

*Via Telephone

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

I. ADMINISTRATIVE MATTERS

1. Opening Remarks and Announcements: The meeting was called to order by Co-Chairs Fotenos and McAllister at 9:30 a.m. Mr. Fotenos thanked the members of the Committee in attendance and informed them that a quorum was present.

2. Minutes of February Meeting: Review and approval of minutes for the meeting on February 7, 2004, was skipped.

II. AGENCY REPORTS

1. Securities and Exchange Commission. Mr. Fotenos introduced Ms. Tyson. Ms. Tyson reported that there had been an extension of the Section 404 assessment requirements for non-accelerated filers to July of 2006, principally because COSO (the Committee of the Sponsoring Organizations of the Treadway Commission, a private-sector group of accounting experts formed in 1985 to study the U.S. financial reporting system) was publishing guidance and the SEC was conducting a roundtable on April 13th, which would be webcast. Ms. Tyson informed the members present that the SEC was soliciting public comment now until April 1st. Ms. Tyson reported that additional guidance is anticipated for smaller companies. The members discussed the extension. Ms. Tyson clarified that the one-year extension is just for non-accelerated filers and foreign private issuers but that the roundtable on April 13th is for everyone.

Ms. Tyson described two studies/projects pending. Certain members present asked about getting onto the committee regarding small public companies.

Ms. Tyson then reported that the SEC had received 130 comments on the securities registration reform proposal, about one half of which requested no modification to electronic roadshows, and others dealt with the scope of certain definitions and change to the liability provisions. Ms. Tyson reported that comments were being reviewed and assembled, and that there is no firm time frame for action.

Ms. Tyson then clarified that the hedge fund advisors registration requirement going into effect next year do not cause those with less than \$25 million under management to have to register with the states, and that a specific provision dealt with it.

At the request of Mr. Fotenos, Ms. Tyson reported that there was nothing new happening with regard to the Part 205 Rules. Mr. McAllister asked about the shareholder nomination proposal and Mr. Le Bas asked about the SEC's regulation of finders. Ms. Tyson committed to reporting back to the committee on those issues.

2. NASD. Mr. Fotenos next introduced Mr. Webber who recapped last year's NASD activity, including registrations, disciplinary actions, rule writing, annual certifications by CEOs of securities firms, test procedures for written compliance policies, dispute resolution activities, customer complaints, on-site exams, and terminations for cause.

Mr. Webber reported on the May 1, 2005, amendment to Rule 10304 in the Uniform Code of Arbitration, concerning time limits to submit claims, and other changes and clarifications. Mr. Webber reported that Notice to Members 05-10 was available on the NASD website, and that Notice 05-08 was also released on the website. Mr. Webber invited questions and comments on any topics to be sent to him by email at john.webber@nasd.com.

3. Department of Corporations. Mr. Fotenos then introduced Mr. Le Bas and Ms. Oshima. Mr. Le Bas reported on a Horton bill (AB 180) concerning expanding the availability of LLPs to engineers, as well as on AB 339, AB 1513, SB 345, SB 701. Mr. Le Bas reported that electronic filing of 25102(f) notices will be required by July 1st with a hardship exemption. Mr. Le Bas noted that the SEC is pushing forward for electronic filing for Form Ds. Mr. Le Bas reported that DOC was looking at regulation in the areas of real property, insurance and senior fraud, and mortgage programs. Mr. Le Bas reported that DOC was looking at guidelines like those published by the National Association of Securities Administrators for real estate and insurance products.

Mr. Le Bas reported that DOC had received a Governor's award for streamlining the franchise law. Mr. Le Bas reported that he had met with SEC staff and that they were looking at re-evaluating the accredited investor standard and re-evaluating the model accredited investor exemption as it compares with 25102(n).

Mr. Le Bas further reported that DOC was informed that the North American Securities Administrators Association (NASAA) is looking at proposing a national standard concerning piercing the corporate veil, as well as shareholder approvals for equity compensation and EDGAR upgrades.

Mr. Le Bas further reported that DOC is looking at the Uniform Securities Act (USA) as well as conducting an ongoing review of the Corporate Disclosure Act.

A representative from DOC then conducted a live demonstration of electronic filings for LOEN (Limited Offering Exemption Notices) under Section 25102(f), highlighting account set up, login, and payment requirements, and explained the scope of the current notice filing online system as well as the range of search features. The members present asked about electronic filings under the system and concerning plans for expansion for other notice filings and searches electronically. The members were informed that the system does not take American Express, but that it may take payments by ACH debit card. The members present were then shown a public search of the Cal-EASI Database for LOEN filings and explained that the scope of searches can date back to September, 2002. The members present were informed that DOC is planning June 30, 2006, to complete the system's expansion. Mr. Fotenos thanked Mr. Le Bas and the representatives of the DOC for their presentation.

4. Secretary of State. Mr. Fotenos introduced the representatives of the Secretary of State. Ms. Bogart first reported that Mr. Shelley's resignation would be effective at the end of the day and that Cathy Mitchell would begin as acting Secretary of State at the close of business. Ms. Bogart offered to be available during the transition period to answer questions or provide other assistance. Ms. Bogart then introduced Ms. Vasquez, manager of the Business Programs Automation Project.

III. SECRETARY OF STATE PRESENTATION RE UCC CONNECT ONLINE FILING SYSTEM FOR UCC AND CORPORATE DISCLOSURE STATEMENT SEARCHES

Ms. Vasquez discussed the automation efforts of the SOS, including search functions and what is to come. Ms. Vasquez described the Business Programs Automation (BPA) origins and history, phases, UCC filings and the business entities database replacement. She described document imaging and work flow change, as well as website interface and functionality. Ms. Vasquez then demonstrated a search of publicly traded company disclosure filings and UCC applications available at www.ss.ca.gov from the California business portal. Ms. Vasquez demonstrated UCC Connect and described costs, accounts, logins, regular and guest users and payment options. The members present asked questions concerning electronic filings and searches under UCC Connect and Ms. Vasquez answered questions. Mr. Fotenos thanked Ms. Vasquez and Ms. Bogart.

IV. LIAISONS' REPORTS

1. Cyberspace Law Committee. Mr. McAllister introduced Mr. Serepca. Mr. Serepca reported that he had communicated the committee's decision not to comment on the Sedona Guidelines, and otherwise had no report.

2. Financial Institutions Committee. Mr. McAllister informed the members present that the committee was looking for a volunteer to fill the vacant position of Financial Institutions Committee Liaison. Jennifer Sostrin volunteered to serve as the Financial Institutions Committee Liaison.

3. UCC Committee. Mr. McAllister introduced Ms. Hong. Ms. Hong reported that there were two vacancies on the UCC Committee, that the UCC Committee was reviewing draft account control agreement provisions and a Uniform Certificate of Title Act, and other UCC Committee agenda items. Mr. Hazen inquired about the UCC Committee Opinion Report and Ms. Hong committed to follow up.

V. SUBCOMMITTEE REPORTS

1. Legislation. Mr. McAllister reported that SB 119 (unanimous written consent with interested director) was going to committee on March 15th. Mr. Fotenos reported that AB 241 was progressing. Mr. McAllister then introduced Mr. Stokdyk.

Mr. Stokdyk reported on SB 627, a restriction on the usury law exemption (25118) that may be applicable to certain venture capital bridge financings. Mr. McAllister

suggested the subcommittee follow the legislation. The members present discussed potential involvement in commenting on the bill and involvement by the Executive Committee. The members present were in favor of not taking the lead on commenting on the legislation.

Mr. Stokdyk reported on AB 1513, which is a bill to amend Section 309 by changing “any” to “and,” which is apparently a “spot bill” to hold a place for a potential amendment in the future.

Mr. Fotenos noted that AB 2167 had passed in 2004 and provides a put remedy if a purchaser purchases from an unlicensed dealer.

2. Communications. Ms. Sostrin reported on the updates to the committee website and related hyperlinks.

3. Education/Publications. Ms. Shugart reported that the committee would be informed in April which programs had been accepted by the Executive Committee for presentation at the Annual Meeting.

VI. 2004-2005 AGENDA: STATUS

Mr. McAllister asked each of the members present to review the Project Roster that had been made available on the committee’s extranet prior to the meeting for accuracy.

1. Opinion Report. Mr. Hazen reported that the draft had been widely distributed. Mr. Hazen reported that the LA County and San Francisco Bar Associations had not yet expressed an interest in commenting. Mr. Hazen reported generally on the amount of feedback received so far and that the exposure draft comment period ends after next month’s meeting. Mr. Hazen reported that the editorial board tentatively planned to report at the May meeting.

2. Guide to Organizing a California Corporation. Ms. Shugart informed the committee that the most recent iteration of the Guide was posted on the extranet and marked to show changes from the last version. The members present provided some general comments on the draft. Mr. McAllister asked all members to review the draft by the April meeting, at which there will be a substantive review.

3. California Disclosure Law Comment Letter. Mr. Stokdyk reported to the committee on the comment letter that had been provided to DOC and that Mr. Le Bas has requested by next Friday. Mr. Stokdyk reviewed the seven items of additional information requested. Mr. Stokdyk asked the representatives of the SOS to look at the statistical items and provide information or respond directly.

4. Corp. Code Section 191. Mr. Stokdyk reported that Ms. Ruosch was working on the project.

5. Corp. Code Section 600(b) Amendments. Mr. Delfino reported that he was reviewing the statute to define proposed changes.

6. Corp. Code Sections 114 & 1501. Mr. Stokdyk reported that these are technical amendments and that he is waiting for analysis from Ms. Ruosch and Mr. Delfino before recommending whether separate ALPs are necessary.

7. Uniform Securities Act Amendments. Mr. Serepca filled in for Mr. Hiraide and reported that the working group had a conference call and was reviewing the statutes prior to dividing them up for technical analysis.

8. Close Corporation Model Supplement Adoption. Mr. Serepca reported that a draft supplement with proposed changes to existing law had been circulated among the members of the working group. Mr. Serepca reported that the working group would try to circulate the draft to the committee at large following the May or June meeting. Mr. Fotenos commended Ms. Weakley and Mr. Serepca for the draft. Ms. Weakley discussed the drafting approach. The working group members informed the members present that the timeline may slip depending on the substantive reviews under way.

9. BLN Article Ideas. Mr. Wood provided various proposed article ideas, including one on Securities Act Section 3(a)(10) fairness hearings in light of the SOX environment. The members present expressed interest in and support for an article on California fairness hearings.

VII. OTHER BUSINESS

1. ABA Task Force on Attorney-Client Privilege. Mr. Hazen reported on his visit with the Task Force and suggested a follow up letter with the official committee position. Mr. Hazen requested the committee to submit a letter to weigh in formally and Mr. Hazen proposed to work on the letter to the Task Force. Mr. Fotenos asked for volunteers for a drafting committee and Mr. Sawyers volunteered. Mr. Hazen then discussed timing for submission to the House of Delegates.

Mr. McAllister called for other business. There being no other business, the meeting was adjourned at approximately 12:30 p.m.

David M. Serepca, Co-Secretary